

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

ALLIANCE FOR HIPPOCRATIC MEDICINE,)
on behalf of itself, its member organizations, their)
members, and these members' patients;)
AMERICAN ASSOCIATION OF PRO-LIFE)
OBSTETRICIANS AND GYNECOLOGISTS,)
on behalf of itself, its members, and their patients;)
AMERICAN COLLEGE OF PEDIATRICIANS,)
on behalf of itself, its members, and their patients;)
CHRISTIAN MEDICAL & DENTAL)
ASSOCIATIONS, on behalf of itself, its members)
and their patients; **SHAUN JESTER, D.O.,** on)
behalf of himself and his patients; **REGINA**)
FROST-CLARK, M.D., on behalf of herself and)
her patients; **TYLER JOHNSON, D.O.,** on)
behalf of himself and his patients; and **GEORGE**)
DELGADO, M.D., on behalf of himself and his)
Patients,

Case No. 2:22-cv-00223-z

Plaintiffs,

v.

U.S. FOOD AND DRUG ADMINISTRATION;)
ROBERT M. CALIFF, M.D., in his official)
capacity as Commissioner of Food and Drugs, U.S.)
Food and Drug Administration; **JANET**)
WOODCOCK, M.D., in her official capacity as)
Principal Deputy Commissioner, U.S. Food and)
Drug Administration; **PATRIZIA CAVAZZONI,**)
M.D., in her official capacity as Director, Center for)
Drug Evaluation and Research, U.S. Food and Drug)
Administration; **U.S. DEPARTMENT OF**)
HEALTH AND HUMAN SERVICES; and)
XAVIER BECERRA, in his official capacity as)
Secretary, U.S. Department of Health and Human)
Services,)

Defendants.

**MOTION OF THE CHATTANOOGA NATIONAL MEMORIAL FOR THE UNBORN FOR LEAVE TO
FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF’S COMPLAINT AND MOTION FOR
TEMPORARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 7, movant, the Chattanooga National Memorial for the Unborn (“NMU”) respectfully seeks this Court’s leave to file the accompanying brief as an *amicus curiae* in support of Plaintiff’s Complaint (Doc. 1) and Plaintiff’s Motion for Preliminary Injunction (Doc. 6). Consistent with Fed. R. App. P. 29(a)(4)(E), counsel for *amicus* authored its brief in whole; no counsel for a party authored this brief in any respect; and no person or entity – other than *amicus*, its members, and its counsel – contributed monetarily to this brief’s preparation or submission.

IDENTITY AND INTERESTS OF MOVANT

Movant, the Chattanooga National Memorial for the Unborn is a Tennessee nonprofit corporation located in Chattanooga, Tennessee, which is dedicated to healing the pain associated with the loss of aborted children and providing education and information about the abortion process and its consequences. The undersigned’s law firm¹ represented the Estate of Brenda Vise with respect to a claim arising from Ms. Vise’s untimely death resulting from the failure of a qualified person to read an ultrasound of Ms. Vise’s body that would have shown the existence of an ectopic pregnancy while being administered abortion pills. This failure caused Ms. Vise’s ectopic pregnancy to go undiagnosed and eventually rupture, which led to a severe infection in Ms. Vise’s body and her untimely death.

The issues presented here on the necessary steps that *should be* required by the FDA to rule out ectopic pregnancy, such as the requirement to perform an ultrasound positively showing the

¹ Attorneys Hoyt O. Samples and Michael S. Jennings represented the Estate of Brenda Vise. Mr. Samples retired from the practice of law at the end of 2022.

existence of a fetus in the uterus, are important and of vital interest to NMU's mission and the health and safety of women in our nation.

REASONS TO GRANT MOVANT'S *AMICUS CURIAE* STATUS

Although no federal or local rule provides for *amicus curiae* briefs here, this Court allows the filing of *amicus* briefs in appropriate cases. *See e.g., United States v. Texas Educ. Agency*, 138 F.R.D. 503, 508 (N.D. Tex. 1991); *Kinard v. Dish Network Co.*, 228 F. Supp. 3d 771, 777 (N.D. Tex. 2017). Given the absence of applicable rules, movant NMU looks to the appellate rules' criteria for granting leave to file *amicus* briefs to support its motion here.

The Advisory Committee Note to the 1998 amendments to Rule 29 explains that "[t]he amended rule . . . requires that the motion state the relevance of the matters asserted to the disposition of the case" as "ordinarily the most compelling reason for granting leave to file." Fed. R. App. P. 29, Advisory Committee Notes, 1998 Amendment. Now-Supreme Court Justice Samuel Alito once wrote "I think that our court would be well advised to grant motions for leave to file *amicus* briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3d Cir. 2002) (citing Michael E. Tigar and Jane B. Tigar, *Federal Appeals – Jurisdiction and Practice* 181 (3d ed. 1999) and Robert L. Stern, *Appellate Practice in the United States* 306, 307-08 (2d ed. 1989)). With that background, movant NMU respectfully submits that its proffered brief will bring at least three relevant and important matters to the Court's attention:

1. The FDA's currently proposed regimen has removed even minimal safeguards that required a woman to be under a physicians care who was capable of diagnosing an ectopic pregnancy;

2. The FDA's currently proposed regimen is devoid of any requirement that an ultrasound be performed to positively confirm the existence of a fetus in the uterus and to rule out an ectopic pregnancy; and
3. The absence of such an ultrasound can result in an undiagnosed ectopic pregnancy which is an invariably extremely serious health issue for women and can be fatal.

These issues are all relevant to this Court's decision on Plaintiff's Motion for Temporary Injunction (Doc. 6) and the ultimate judgment in this case. Accordingly, movant respectfully submits that its brief will aid the Court.

For the foregoing reasons, movant the Chattanooga National Memorial for the Unborn respectfully requests that this Court grant the motion for leave to file the accompanying *amicus curiae* brief.

Respectfully submitted, this 9th day of January, 2023.

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CERTIFICATE OF SERVICE

I certify that this document will be served on all defendants via ECF and via first class

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This 9th day of January, 2023.

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